

Associates, LLC, Respondent was not licensed as an IAR or a securities salesperson in Ohio;

- (5) Respondent's CRD record further discloses that between September 8, 2000 and September 16, 2009, Respondent maintained his Ohio IAR license through Wells Fargo Advisors, LLC, CRD Number 19616;
- (6) Respondent's CRD record discloses that between October 12, 2000 and September 16, 2009, Respondent also maintained his Ohio securities salesperson license through Wells Fargo Advisors, LLC, CRD Number 19616;
- (7) Investor RM is a resident of Bay Village, Ohio who, at the age of 79, invested through Respondent;
- (8) On or about August 4, 2009, Respondent convinced RM to invest in excess of \$400,000, by falsely assuring him that his retirement money would be placed in low-risk investments, and that there would be a stop-loss feature in place;
- (9) During the time period that Respondent was not licensed by the Division, Respondent provided investment advice to and initiated the purchase and sale of securities in the account of RM as follows:
 - (a) On or about October 9, 2009, Respondent initiated the purchase of 4000 shares of Proshares Ultrashort QQQ ("UltraShort QQQ"), 4000 shares of Proshares Ultrashort S&P 500 ("Ultrashort S&P 500"), and 8000 shares of Proshares Ultra Short Real Estate ("Ultrashort Real Estate"); and
 - (b) On or about November 9, 2009, Respondent initiated the purchase of 1200 shares of Ultrashort QQQ and 100 shares of Ultrashort S&P 500;
- (10) Ultrashort QQQ, Ultrashort S&P 500 and Ultrashort Real Estate are investments known as exchange traded funds ("ETFs"), more specifically leveraged and inverse ETFs;
- (11) Inverse and leveraged ETFs are highly complex and risky investments whose value changes on a daily basis with a multiple of the return to a particular index, and as a result of the daily rebalancing, investors who hold these types of investments for more than a day or two can suffer large losses even when the market index they reference experiences only very small gains and losses over extended investment periods;

- (12) Respondent disregarded RM's expressed investment objectives to acquire conservative, low-risk investments when he initiated the purchase of leveraged and inverse ETFs in RM's account for a long-term investment;
- (13) On or about April 6, 2010, Respondent sold all of the ETF shares purchased in RM's account in October and November 2009 for a total loss of \$119,566.76, which included a loss of \$35,760.73 from the sale of Ultrashort Real Estate, a loss of \$31,003.67 from the sale of Ultrashort QQQ, and a loss of \$52,802.36 from the sale of Ultrashort S&P 500;
- (14) Respondent earned a fee of 2% on the amount of Dr. McDonald's account for his investment advisory services, which was billed monthly in 2009 and 2010. The total fee paid to the Respondent by RM was \$4,247.38;
- (15) Respondent's CRD record sets forth following disclosures:
 - (a) In a complaint filed with the NASD by Ohio residents on or about October 12, 2000, in NASD Case Number 01-01446, Respondent was accused of mishandling of accounts, excessive trading, and over concentration regarding speculative unstable stock, negligence, fraud, breach of fiduciary duty, and misrepresentation from November 19, 1998 through September 8, 2000. While Respondent made no individual contribution to resolve the complaint, Respondent's employer, during that period, paid \$10,057.53, where complainant had demanded \$310,000;
 - (b) In a complaint filed with FINRA by an Ohio resident on or about August 12, 2010, in FINRA Case Number 10-03538, Respondent was accused of placing the complainant in an unsuitable investment, specifically ETFs, on or about December 30, 2004. The complainant alleged that Respondent invested in excessive concentration, namely \$90,000 of an aggregate \$117,000 investment, in ETFs. While Respondent made no individual contribution to resolve the complaint, Respondent's employer, at that time, paid approximately \$38,500, where complainant had demanded \$76,000;
 - (c) In a complaint filed with FINRA by Ohio residents on or about July 26, 2011, in FINRA Case Number 11-02739, Respondent was accused of placing complainants in unsuitable investments, namely ETFs, during 2008 and 2009. The complainants alleged total losses of \$260,000. While Respondent made no individual contribution, Respondent's employer, at that time, paid the \$250,000 pursuant to a settlement in this case;

- (d) In a complaint filed with FINRA by Ohio residents on or about December 6, 2012, Respondent was accused of placing complainants in unsuitable investments, specifically ETFs, during 2008 and 2009. The complainants alleged \$450,000 in damages. Respondent's employer during that period paid approximately \$252,500 to settle this case, with no contribution by Respondent;
 - (e) In a complaint filed with FINRA by Ohio residents on January 28, 2014, in FINRA Case Number 14-00099, Respondent was accused of placing complainants in unsuitable investments, specifically ETFs, from approximately September 15, 2005, through September 30, 2009. The complainants alleged losses of \$447,000. Respondent's employer at the time of the alleged violations paid \$90,000 plus \$1,425 for reimbursement of FINRA filing fees to settle this case, with no contribution by Respondent; and
 - (f) In a complaint filed with FINRA by Montana residents on or about November 15, 2013, in FINRA Case Number 13-03264, Respondent was accused of placing complainants in unsuitable investments, specifically leveraged ETFs, in or about November 2008. The complainant alleged losses of \$750,000. While Respondent made no individual contribution, Respondent's employer, during that time, paid \$500,000 through settlement in this case;
- (16) In addition to the CRD record noted in the preceding paragraph, Respondent has been named as a defendant in a complaint filed in Docket Number GD-11-016862 in the Court of Common Pleas of Allegheny County, Pennsylvania which alleges fraud, breach of fiduciary duty and breach of contract. The civil action is still pending;
- (17) Respondent has failed to maintain accurate disclosures on his licensing record maintained through CRD regarding the complaints and settlements set forth in the preceding paragraphs;
- (18) For example, Respondent's form U-4 most recently filed with the CRD on March 24, 2010, contains the following inaccuracies:
- (a) In response to Question 14I(1)(a), "Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which is still pending?", Respondent marked "no";
 - (b) In response to Question 14I(1)(c), "Have you ever been named as a respondent/defendant in an investment-related, consumer-

initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which was settled, prior to 05/18/2009, for an amount of \$10,000 or more?", Respondent marked "no";

- (c) In response to Question 14I(1)(d), "Have you ever been named as a respondent/defendant in an investment-related, consumer-initiated arbitration or civil litigation which alleged that you were involved in one or more sales practice violations and which was settled, on or after 05/18/2009, for an amount of \$15,000 or more?", Respondent marked, "no";
- (d) In response to Question 14I(2)(a), Have you ever been the subject of an investment-related, consumer-initiated (written or oral) complaint, which alleged that you were involved in one or more sales practice violations, and which was settled, prior to 05/18/2009 for an amount of \$10,000 or more?", Respondent marked, "no";
- (e) In response to Question 14I(4)(a), since 5/18/2009, "Have you ever been the subject of an investment-related, consumer-initiated arbitration claim or civil litigation which alleged that you were involved in one or more sales practice violations, and which was settled for an amount of \$15,000 or more?", Respondent marked, "no";

(19) R.C. 1707.44(A)(2) states the following:

"(2) No person shall engage in any act or practice that violates division (A) of section 1707.141 or section 1707.161 of the Revised Code";

(20) R.C. 1707.141(A)(1) states:

"No person shall act as an investment adviser, unless one of the following applies:

- (1) The person is licensed as an investment adviser by the division of securities; however, nothing in this section shall be construed to prohibit a person from being licensed by the division as both an investment adviser and a dealer or salesperson";

(21) R.C. 1707.161(A)(1) states:

"(A) No person shall act as an investment adviser representative, unless one of the following applies:

- (1) The person is licensed as an investment adviser representative by the division of securities.”;
- (22) Respondent violated R.C. 1707.44(A)(2) by acting as an investment adviser or investment adviser representative during a period that he did not maintain a securities license;
- (23) R.C. 1707.44(B)(5) states:
- “No person shall knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, for any of the following purposes:
- (5) Advising for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities”;
- (24) Respondent violated R.C. 1707.44(B)(5) by advising, for compensation, RM to invest by falsely assuring him that the retirement money would be placed in low-risk investments and there would be a stop-loss feature in place;
- (25) R.C. 1707.44(M)(1)(b) states:
- “(1) No investment adviser or investment adviser representative shall do any of the following:
- (b) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person”;
- (26) R.C. 1707.44(M)(1)(d) states:
- “(1) No investment adviser or investment adviser representative shall do any of the following:
- (d) Engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative. The division of securities may adopt rules reasonably designed to prevent acts, practices, or courses of business that are fraudulent, deceptive, or manipulative”;
- (27) Respondent violated R.C. 1707.44(M)(1)(b) and (d) by obtaining client funds through misrepresentation of the risk, terms and nature of the securities that would be and were purchased on their behalf;

(28) O.A.C. 1301:6-3-16.1(A)(1)(a) states:

"(1) The license application specified in division (D) of section 1707.161 of the Revised Code shall consist of:

(a) A properly completed form U-4, "Uniform Application for Securities Industry Registration or Transfer" for each investment adviser for whom the applicant seeks to act as an investment adviser representative";

(29) O.A.C. 1301:6-3-16.1(C) states:

"Updating. Updates to the form U-4 shall be promptly filed with the division through the 'CRD'";

(30) Respondent violated O.A.C. 1301:6-3-16.1(C) by failing to update his form U-4 to provide accurate licensure disclosures;

(31) R.C. 1707.19(A)(1) authorizes the Division to revoke or suspend the Ohio investment adviser representative license when the Division determines that a licensee:

"(1) Is not of good business repute";

(32) O.A.C. 1301:6-3-19(D)(8) provides that the Division in determining "good business repute" shall consider whether the licensee:

"(8) Has violated any provision of paragraph (A) or (B) of this rule, any provision of Chapter 1707. of the Revised Code or any rule promulgated thereunder";

(33) O.A.C. 1301:6-3-19(D)(9) provides that the Division in determining "good business repute" shall consider whether the licensee:

"(9) Has engaged in any conduct which would reflect on the reputation for honesty, integrity, and competence in business and personal dealings of the applicant, investment adviser, investment adviser representative, dealer, salesperson or state retirement system investment officer or bureau of workers' compensation chief investment officer including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure, misstatement of material facts, and manipulative or deceptive practices";

(34) O.A.C. 1301:6-3-19(D)(11) provides that the Division in determining "good business repute" shall consider whether the licensee:

"Has been the subject of any complaint, arbitration or civil litigation that alleges a violation of state or federal law, or the rules or code of ethics of any association of investment advisers, investment adviser representatives, securities salespersons or dealers, any professional association granted disciplinary or regulatory authority by state or federal law, or by any recognized securities exchange, excluding any complaint that has been denied or any arbitration or civil litigation that resulted in a judgment or an award against the party bringing the action";

- (35) R.C. 1707.19(A)(4) authorizes the Division to revoke or suspend an Ohio investment adviser representative license when the Division determines that a licensee:

"(4) Has knowingly violated any provision of sections 1707.01 to 1707.45 of the Revised Code, or any regulation or order made thereunder"; and

- (36) R.C. 1707.19(A)(9) authorizes the Division to revoke or suspend an Ohio investment adviser representative license when the Division determines that a licensee:

"(9) Conducts business in violation of such rules and regulations as the division prescribes for the protection of investors, clients, or prospective clients".

WHEREAS, based on paragraphs (1) through (36), the Division alleges that the Respondent is not of good business repute as set forth in R.C. 1707.19(A)(1), based on considerations set forth in O.A.C. 1301:6-3-19(D)(8), O.A.C. 1301:6-3-19(D)(9) and 1301:6-3-19(D)(11); and

WHEREAS, based on paragraphs (1) through (36), the Division further alleges that the Ohio investment adviser representative license of Respondent is subject to suspension or revocation based on R.C. 1707.19(A)(4), and R.C. 1707.19(A)(9) and further based on violations of R.C. 1707.44(A)(2), R.C. 1707.44(B)(5), R.C. 1707.44(M)(1)(b) and R.C. 1707.44(M)(1)(d).

THEREFORE, IT IS ORDERED THAT, pursuant to Ohio Revised Code Chapter 119, Respondents are hereby notified that thirty (30) days from the date of mailing of this Notice, the Division, pursuant to Revised Code Section 1707.19, intends to issue a FINAL ORDER TO SUSPEND OR REVOKE the Ohio Investment Adviser Representative License of Timothy K. Fife;

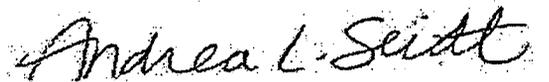
FURTHER, IT IS ORDERED THAT, pursuant to Revised Code Chapter 119, Respondent is hereby notified that Respondent is entitled to an adjudicative hearing. If Respondent wishes to request such hearing, the request must be made in writing and must be received in the offices of the Division within thirty (30) days from the date of mailing of this Notice. At the hearing, Respondent and the Division may appear in

person, by their attorneys, or together with their attorneys, or they may present their position, arguments, or contentions in writing, and that at the hearing they may present evidence and examine witnesses appearing for and against them; and

FURTHER, IT IS ORDERED THAT, if no hearing is timely requested, a FINAL ORDER TO SUSPEND OR REVOKE the Ohio Investment Adviser Representative License of Timothy K. Fife may be issued.

MJB/cn

WITNESS MY HAND AND THE OFFICIAL SEAL OF THIS DIVISION at
Columbus, Ohio this 19th day of June, 2014.



Andrea L. Seidt, Commissioner of Securities